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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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APR 08 2010

FILE:

Office: VERMONT SERVICE CENTER

Date:

IN RE:

APPLICATION:

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed. The order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Columbia who, on February 28, 1990, appeared at John F. Kennedy International Airport. The applicant presented a Colombian passport containing a nonimmigrant visa bearing the name [REDACTED] " The applicant was placed into secondary inspections. Further investigation of the passport revealed that the passport informational page had been photo substituted and cut from another passport. Despite presenting these facts to the applicant, the applicant continued to insist that her name was [REDACTED] " The applicant eventually admitted to her true identity and was placed into immigration proceedings for fraud. On March 6, 1990, the immigration judge ordered the applicant removed from the United States. On March 8, 1990, the applicant was removed from the United States and returned to Columbia.

On March 23, 1995, the applicant's then lawful permanent resident father filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on November 1, 1995. On November 28, 2000, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) based on the approved Form I-130. On December 5, 2002, the applicant appeared at U.S. Citizenship and Immigration Services' (USCIS) New York City District Office. The applicant testified that she had entered the United States without inspection on June 7, 1990. On July 1, 2003, the Form I-485 was denied for fraud. On January 5, 2006, the applicant filed a second Form I-485. On November 28, 2006, the applicant filed the Form I-212, indicating that she continued to reside in the United States. The applicant is inadmissible under section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii). She seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to reside in the United States with her now naturalized U.S. citizen father, lawful permanent resident mother, two U.S. citizen brothers and one lawful permanent resident brother.

The acting director determined that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *See Acting Director's Decision* dated August 13, 2008. On July 6, 2009, the AAO dismissed the applicant's appeal because the applicant did not warrant a favorable exercise of discretion. *Decision of AAO*, dated July 6, 2009.

In his motion to reconsider, counsel contends that the denial of the applicant's appeal was erroneous and that the appeal should have been granted. *See Memorandum in Support of Motion to Reopen*, undated. In support of his contentions, counsel submits only the referenced memorandum. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(9) of the Act states in pertinent part:

(A) Certain aliens previously removed.-

(i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under

section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

- (ii) Other aliens.-Any alien not described in clause (i) who-
 - (I) has been ordered removed under section 240 or any other provision of law, or
 - (II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
- (iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the [Secretary of Homeland Security] has consented to the alien's reapplying for admission.

8 C.F.R. § 103.5(a) provides, in pertinent part:

(2) *Requirements for motion to reopen.*

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. A motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because:

- a. The requested evidence was not material to the issue of eligibility;
- b. The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
- c. The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and

before the Service's request was sent, and the request did not go to the new address.

(3) Requirements for motion to reconsider.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

In his motion to reopen, counsel contends that the applicant's parents and brother are not after-acquired equities because they have been her parents/brother since she was born. *See Memorandum in Support of Motion to Reopen*, undated. The AAO finds counsel's contention unpersuasive. First, the AAO only found the applicant's mother to be an after-acquired equity. As discussed in the AAO's decision, the applicant's mother is an after-acquired equity because she became a lawful permanent resident after the applicant had been placed into immigration proceedings. The case law cited in the AAO's decision support this office's findings and counsel fails to cite any pertinent precedent decisions that establish the AAO's findings to be an incorrect application of law.

In his motion to reconsider, counsel contends that the applicant's fraudulent entry, unlawful presence and unauthorized employment are not separate "issues," but rather part of the fact that the applicant admittedly lived as an illegal alien in the United States. Counsel contends that one cannot pick apart the lifestyle of an illegal alien and separate each facet into a negative factor. Counsel contends that if the applicant's "illegal status" were meant to be an insurmountable issue to the granting of permission to reapply then no such application could be successful and the applicant's case is precisely the sort of case that the statute is meant to address: an immigrant whose sole indiscretion in life was to have returned to the United States without permission after having been removed. *See Memorandum in Support of Motion to Reopen*, undated. The AAO finds counsel's contentions unpersuasive. Each alien who has been removed from the United States may have varying degrees of immigration violations and each of those violations is a negative factor to be considered in an applicant's case. Not all aliens removed from the United States enter the United States by fraud: some enter lawfully and overstay his or her authorized stay. Not all aliens removed from the United States reenter the United States after having been removed and not all aliens removed from the United States accrue unlawful presence or engage in unauthorized employment. As such, these various factors are not "part and parcel" of being an illegal alien in the United States. The case law cited in the AAO's decision support this office's findings and counsel fails to cite any pertinent precedent decisions that establish the AAO's findings to be an incorrect application of law.

In his motion to reconsider, counsel contends that the denial of the applicant's appeal was erroneous and that the appeal should have been granted. *See Memorandum in Support of Motion to Reopen*, undated.

In support of his motion to reconsider, while counsel contends that there was an incorrect application of law, as discussed above, counsel's contentions are unpersuasive and are contrary to relevant case law. Accordingly, the AAO finds that counsel failed to state the reasons for reconsideration that

were supported by any pertinent precedent decisions establishing that the AAO's decision was based on an incorrect application of law.

The petitioner's motion does not meet applicable requirements. The regulation at 8 C.F.R. § 103.3(a)(3) states that a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law. Accordingly, the motion must be dismissed for failing to meet applicable requirements.

ORDER: The motion is dismissed. The order dismissing the appeal will be affirmed.